Subramanian a/l Sannasy v SAC II Syed Alwi bin Syed Hamid & Anor

HIGH COURT (JOHOR BAHRU) — CIVIL SUIT NO [MT4] 22–257 OF 2003
SYED AHMAD HELMY JC
2 JULY 2004

Administrative Law — Rules of natural justice — Procedural fairness — Plaintiff convicted under Penal Code and fined — Disciplinary proceedings were taken against plaintiff under Reg 37 of Public Officers (Conduct and Discipline) Regulations 1993 — Whether plaintiff's dismissal based on wrong regulation — Whether contravened procedural fairness — Whether dismissal null and void — Public Officers (Conduct and Discipline) Regulations 1993 Regs 33, 33(a), 37 and 38(g)

The plaintiff was a member of a Malaysian Police Force and was charged for an offence under s 222 of the Penal Code for falsifying documents to release three Indonesians detained from the police lock-up in Batu Pahat. The plaintiff was convicted and fined. The plaintiff paid the fine and did not appeal against the sentence. Upon the plaintiff's conviction, a report was submitted by the plaintiff's head of department to the Disciplinary Authority recommending a disciplinary action against the plaintiff under Reg 33(a) Public Officers (Conduct and Discipline) Regulations 1993 ('the 1993 Regulations'). The Disciplinary Authority after considering the fact of the conviction and the recommendation of the head of department dismissed the plaintiff pursuant to Reg 37 of the 1993 Regulations. The counsel for the plaintiff argued that Reg 37 was the proper provision that was applicable. The issue before this court was whether the plaintiff's dismissal based upon a wrong provision of the law contravened procedural fairness and hence was null and void.

Held, dismissing the application:

(1) Pursuant to proviso (a) of art 135(2) of the Federal Constitution, where a member of a public service is dismissed on the ground of conduct in respect of which a criminal charge has been proved such dismissal shall be without a right to be heard. A criminal charge has been proved against the plaintiff and the plaintiff was convicted under s 222 of the Penal Code. Therefore, the plaintiff lost his right to be heard by virtue of the above said proviso (see para 14).

(3) Procedural fairness is much more than merely quoting the wrong section or provision of the law. Procedural unfairness and/or procedural irregularity must affect the rights of the plaintiff and in that the plaintiff's right is affected by the mistake in the legal provision. The disciplinary authority had taken into account Reg 37 in this case. The plaintiff herein has not suffered any injustice over the decision to dismiss him under Reg 38(g) instead of Reg 37 of the 1993 Regulations. There was nothing in the affidavit of the plaintiff to show that he had been prejudiced by the misstatement of the regulations. Further, the dismissal letter also showed that the disciplinary authority duly considered the criminal conviction and the recommendations of

the head of department before dismissing the plaintiff. It is clear that the intention of the disciplinary authority as per the recommendation of the Ketua Jabatan was to dismiss the plaintiff because of the criminal conviction. Further, since the sentence of dismissal is provided under both provisions, that is, Regs 37 and 38(g) the end result would have been the same (see paras 18, 20 and 21).

(3) In the exercise of its discretionary powers to grant declaratory reliefs there are occasions where the court must look at the justice as a whole and not simply decide that there is simply an error of law (see para 25).

[Bahasa Malaysia summary

Plaintif adalah ahli Polis Diraja Malaysia dan telah dituduh untuk kesalahan di bawah s 222 Kanun Keseksaan kerana telah memalsukan dokumen-dokumen untuk melepaskan tiga warga Indonesia yang telah ditahan di dalam lokap Balai Polis Batu Pahat. Plaintif telah di sabitkan dan dikenakan denda. Plaintif membayar denda tersebut tetapi tidak merayu terhadap hukuman tersebut. Setelah sabitan tersebut, satu laporan telah diserahkan oleh ketua jabatan plaintif kepada pihak berkuasa Disiplin mengesyorkan satu tindakan disiplin terhadap plaintif di bawah Peraturan 33(a) Peraturan-peraturan am (Kelakuan dan Disiplin) Pegawai-Pegawai Awam 1993 ('Peraturan 1993 tersebut'). Pihak berkuasa disiplin selepas mempertimbangkan fakta sabitan tersebut dan syor ketua jabatan memecat plaintif mengikut Peraturan-Peraturan 37 Peraturan 1993 tersebut. Peguam plaintif berkata bahawa Peraturan yang patut digunakan adalah Peraturan 37. Isu di hadapan mahkamah ini adalah sama ada pemecatan plaintif yang berdasarkan peruntukkan undang-undang yang salah bercanggah dengan keadilan prosedur dan menyebabkan pemecatan plaintif batal dan tidak sah.

Diputuskan, menolak permohonan tersebut:

(1) Menurut proviso (a) kepada perkara 135(2) Perlembagaan Persekutuan, apabila seseorang penjawat awam dipecat atas alasan kelakuan yang satu pertuduhan jenayah telah dibuktikan, pemecatan sedemikian adalah tanpa hak untuk didengar. Satu pertuduhan jenayah telah dibuktikan terhadap plaintif dan plaintif telah disabitkan dibawah s 222 Kanun Keseksaan. Oleh yang demikian, plaintif telah kehilangan hak untuk didengar menurut proviso tersebut (lihat perenggan 14).

(2) Keadilan prosedur adalah lebih daripada pemetikkan seksyen atau peruntukkan undang-undang yang salah. Ketidakadilan prosidur dan/atau salah aturan prosedur hendaklah menjejaskan hak plaintif dan hak plaintif hendaklah terjejas disebabkan oleh kesilapan peruntukkan undang-undang. Pihak berkuasa disiplin telah mempertimbangkan Peraturan 37 di dalam kes ini. Plaintif tidak mengalami sebarang ketidakadilan di atas keputusan untuk memecat beliau di bawah Peraturan 38(g) dan bukan Peraturan 37 Peraturan 1993. Tiada apa-

apa di dalam afidavit plaintif yang menunjukkan bahawa plaintif telah diprejudiskan oleh penggunaan Peraturan yang silap. Lagipun, surat pemecatan menunjukkan bahawa pihak berkuasa disiplin telah mempertimbangkan sabitan jenayah dan syor ketua jabatan sebelum memecat plaintif. Ia jelas bahawa niat pihak berkuasa disiplin seperti di dalam syor Ketua Jabatan adalah untuk memecat plaintif sebab sabitan jenayah itu. Memandangkan hukuman pemecatan telah diperuntukkan oleh kedua-dua peruntukan, iaitu Peraturan-Peraturan 37 dan 38(g), hasilnya akan menjadi sama (lihat perenggan 18, 20 dan 21).

(3) Dalam melaksanakan kuasa budibicara mahkamah dalam membenarkan relif-relif deklarasi, terdapat situasi-situasi di mana mahkamah hendaklah melihat keadilan kes secara keseluruhannya dan tidak hanya memutuskan bahawa terdapatnya kesilapan undang-undang (lihat perenggan 25).]

Notes

For cases on procedural fairness, see 1 *Mallal's Digest* (4th Ed 2002 Reissue) paras 758-759.

For breach of natural justice, see 9 *Halsbury's Laws of Malaysia*, paras [160.091] to [160.109].

Cases referred to

Deputy Chief of Police Officer, Perak & Anor v Ramesh a/l Thangaraju [2001] 1 MLJ 161 (refd)

Dewan Undangan Negeri Kelantan & Anor v Nordin bin Salleh & Anor [1992] 1 MLJ 697 (refd)

Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor [1995] 3 MLJ 369 (refd)

R Kandasamy v Kempas (Malaya) Bhd [1981] 1 MLJ 148 (refd)

Legislation referred to

Federal Constitution art 135(2), proviso (a)

Industrial Relations Act 1967 s 16A

Penal Code s 222

Public Officers (Conduct and Discipline) Regulations 1993 regs 33, 33(a)-(d), 37, 37(1), 38, 38(g), s 33

Rules of the High Court 1980 O 14, O 33

Gobind Singh Deo (Zamri Idrus with him) (Karpal Singh & Company) for the plaintiff.

Azizah Hj Nawawi (Senior Federal Counsel, Attorney-General's Chambers, Putrajaya).

Syed Ahmad Helmy JC:

[1] By agreement of the parties the matter herein was proceeded upon to be disposed under O 33 and/or O 14 of the Rules of the High Court 1980 as per the prayers in encl 6.

[2] The issue for the court's determination was whether the dismissal of the plaintiff vide a letter dated 26 August 2002 is null and void and that the plaintiff is still a police officer in the police force.

[3] The undisputed facts as discernible from the affidavits filed in encll 6A and 9 are as follows:

(1) On 15 November 2000, a police report was lodged against the plaintiff for falsifying documents to release three Indonesians detained from the police lock-up in Batu Pahat.

(2) The plaintiff was charged in court for an offence under s 222 of the Penal Code and was convicted and fined RM1500 in default to three months' imprisonment. The plaintiff paid the fine and did not appeal against the sentence.

(3) Pursuant to the said court conviction, the head of the plaintiff's department submitted a report to the disciplinary authority recommending that disciplinary action for the purpose of dismissal be taken against the plaintiff under Reg 33(a) of the Public Officers (Conduct and Discipline) Regulations 1993 ('the 1993 Regulations').

(4) On 20 August 2002, the disciplinary authority owing to the seriousness of the offence committed by plaintiff decided to dismiss the plaintiff from the police force.

(5) In the letter dated 26 August 2002, ('the dismissal letter') the disciplinary authority after considering the fact of the conviction and the recommendation of the head of department dismissed the plaintiff pursuant to Regs 33, 37 and 38(g) of the 1993 Regulations.

[4] In advancing his pleaded case that the decision to dismiss the plaintiff is null and void it is the plaintiff's submission that the defendants have wrongly invoked Reg 38 of the 1993 Regulations when they should have dismissed the plaintiff under Reg 37. Therefore, there has been an error in the process, that is a procedural irregularity in the decision making process leading to the plaintiff's dismissal.

[5] The defendant in opposing the plaintiff's application submits that the decision making process which led to the plaintiff's dismissal is not null and void as there was procedural fairness.

[6] To better appreciate the issue it is only appropriate to lay out the dismissal letter and the applicable provisions of the 1993 Regulations. The dismissal letter reads as follows:

A IBU PEJABAT POLIS

POLIS DIRAJA MALAYSIA

80990 JOHOR BAHRU

JOHORTel: 07-2254422

B

Ruj Kami: (PR)RF/104687

Tarikh: 26 Ogos 2002

Lans Koperal Subramaniam a/l Sannasy

C (RF/104687)

Ibu Pejabat Polis Daerah

Batu Pahat

JOHOR

D

Melalui :-

E Ketua Polis Daerah,

BATU PAHAT

HUKUMAN TATATERTIB - BUANG KERJA

F

Adalah dimaklumkan bahawa Lembaga Tatatertib. telah menerima laporan daripada Ketua Polis Daerah Batu Pahat, bahawa kamu Lans Koperal Subramaniam a/l Sannasy (RF/104687) telah dijatuhkan hukuman denda RM1500.00 i/d (3) bulan penjara (denda dibayar) bagi pertuduhan di bawah Seksyen 222 KK oleh Mahkamah Majistret Batu Pahat.

G

2. Pada menjalankan kuasa-kuasa tatatertib yang telah diwakilkan kepada Lembaga Tatatertib oleh Suruhanjaya Pasukan Polis mengikut PU(B) 441 bertarikh 14.12.2000, saya SAC II Syed Alwi bin Syed Hamid, Pengerusi Lembaga Tatatertib setelah meneliti fakta sabitan bersama-sama Ahli Lembaga Tatatertib serta syor Ketua Polis Daerah Batu Pahat selaras dengan kehendak Peraturan 37, Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 dengan ini memutuskan kamu dikenakan hukuman 'BUANG KERJA' di atas sabitan Mahkamah tersebut selaras di bawah Peraturan 38(g), Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993.

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3. Hukuman buang kerja terhadap kamu berkuatkuasa mulai 20.8.2002 iaitu tarikh mesyuarat Lembaga Tatatertib, Kontinjen Johor di bawah Peraturan 38, Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993.

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4. Sila akui penerimaan surat ini dengan menandatangani di ruangan yang disediakan.

-sgd-

(SYED ALWI BIN SYED HAMID) SAC II

Pengerusi Lembaga Tatatertib

KONTINJEN JOHOR

s.k.:-

Timbalan Pengarah Pengurusan (Tatatertib),

KPN (Perkhidmatan/Perjawatan),

KP JH (Rekod),

KP JH (Bahagian Gaji), - Sila ambil tindakan ke atas gaji subjek

KP JH (Perkhidmatan/Perjawatan),

Unit Khas Komputer,

Batu Pahat FLTT 13/2001,

Fail perp/perk.

MIM/nak

s.buang ketja LTT

[7] Regulation 33 reads as follows:

'33 Jika presiding jenayah terhadap seseorang pegawai berkeputusan dengan dia disabitkan, atau jika rayuannya terhadap sabitan telah ditolak, Ketua Jabatan hendaklah memohon kepada Pendaftar Mahkamah atau Penolong Kanan Pendaftar Mahkamah untuk mendapatkan suatu *salinan keputusan Mahkamah itu*. Apabila diterima keputusan itu, Ketua Jabatan hendaklah menghantarkannya kepada Pihak Berkuasa Tatatertib yang mempunyai kuasa untuk menjatuhkan hukuman buang kerja atau turun pangkat, berserta dengan rekod perkhidmatan pegawai itu, dan hendaklah mengesyorkan sama ada pegawai itu patut:

(Emphasis added)

(a) dibuang kerja atau diturunkan pangkat;

(b) dikenakan apa-apa hukuman selain daripada hukuman buang kerja atau turun pangkat;

(c) ditamatkan perkhidmatannya demi kepentingan awam; atau

(d) tidak dikenakan apa-apa hukuman,

bergantung kepada jenis seriusnya kesalahan yang dilakukan berbanding dengan takat yang pegawai itu telah memburukkan nama perkhidmatan awam.'

[8] Regulation 37 reads as follows:

'37(1) Jika, setelah menimbangkan laporan dan syor Ketua Jabatan yang dihantar *mengikut peraturan 33* atau 36, Pihak Berkuasa Tatatertib yang berkenaan berpendapat -

(a) bahawa pegawai itu patut dibuang kerja atau diturunkan pangkat, Pihak Berkuasa Tatatertib itu hendaklah dengan serta-merta mengenakan hukuman yang sesuai;

(b) bahawa pegawai itu tidak patut dibuang kerja atau diturunkan pangkat tetapi patut dikenakan hukuman yang lebih ringan, Pihak Berkuasa Tatatertib itu hendaklah mengenakan ke atas pegawai itu apa-apa hukuman yang lebih ringan yang difikirkannya sesuai dan patut; atau

(c) bahawa pegawai itu tidak patut dikenakan apa-apa hukuman, Pihak Berkuasa Tatatertib itu hendaklah memutuskan sedemikian.

(2) Jika seseorang pegawai itu dihukum dengan hukuman selain daripada buang kerja atau jika tiada hukuman dikenakan, Pihak Berkuasa Tatatertib yang berkenaan hendaklah mengarahkan pegawai itu bertugas semula dan -

(a) dalam hal jika tiada hukuman dikenakan, hendaklah mengarahkan pegawai itu dibayar apa-apa bahagian emolumen yang tidak dibayar kepadanya semasa tempoh penahanan kerjanya atau penggantungan kerjanya;

(b) dalam hal jika hukuman telah dikenakan, boleh, mengikut budi bicaranya mengarahkan pegawai itu dibayar apa-apa bahagian emolumen yang tidak dibayar kepadanya semasa tempoh penahanan kerjanya atau penggantungan kerjanya.'

[9] Regulation 38 reads as follows:

'38 Pihak Berkuasa Tatatertib yang berkenaan boleh, jika ia mendapati seseorang pegawai bersalah kerana melanggar mana-mana peruntukan Peraturan-Peraturan ini, dan setelah mengambil kira seriusnya kesalahan itu, mengenakan ke atas pegawai itu mana-mana satu daripada hukuman yang berikut atau apa-apa gabungan dua hukuman atau lebih:

(a) amaran;

(b) denda;

(c) lucuthak emolumen;

(d) tangguh pergerakan gaji;

(e) turun gaji;

(f) turun pangkat; atau

(g) buang kerja.'

[10] Upon perusing the dismissal letter it is clear that the disciplinary authority meted out the punishment of dismissal under Reg 38(g) of the 1993 Regulations and it is on this aspect of the dismissal letter that learned counsel for the plaintiff forcefully argued the disciplinary authority had no authority to mete out the punishment as the proper provision is Reg 37 which is applicable in a s 33 situation where dismissal is meted out pursuant to a finding of guilt by a court of law. Hence there is a glaring instance of procedural irregularity in the decision making process.

[11] In approaching the determination of the issue aforesaid, it is imperative for this court to look at all the circumstances of the case in ascertaining whether plaintiff has received procedural fairness before his dismissal.

[12] The concept of procedural fairness was deliberated by the Court of Appeal in *Deputy Chief Police Officer, Perak & Anor v Ramesh a/l Thangaraju* [2001] 1 MLJ 161, where the issue before the Court of Appeal was whether the respondent received procedural fairness in the decision making process, namely the reading of the statement of the deceased, Kamaruddin during the disciplinary proceedings that led to his dismissal from the police force. Justice Gopal Sri Ram in agreeing with the submission of the appellant held at p 165:

> … that the real question in a case such as the present is whether at the end of the day, the respondent had what one might objectively call a fair procedure. If he has had fairness, then he has had all that the law requires of the appellants.

[13] After assessing the facts and the law, his Lordship stated at p 167:

> In the present case, the respondent had the benefit of a full enquiry at which he was represented by an officer. The most material witnesses, namely the ACA officers who witnessed the incident in question gave their evidence in his presence. He was given the opportunity to cross-examine them. So far as Kamaruddin's statement was concerned, the reading of it in the proceedings did not produce any procedural unfairness since the respondent was given the opportunity to contradict it. It transpires from the evidence that he did not choose that course.
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> …
>
> ... In my view, the respondent did, in all the circumstances of the case, receive procedural fairness.

[14] On the factual matrix herein, the proviso (a) of art 135(2) of the Federal Constitution applies with full force and effect to the plaintiff, as he was dismissed on the ground of conduct in respect of which a criminal charge has been proved against him, namely a conviction under s 222 of the Penal Code. Hence, the plaintiff has no right/opportunity to be heard before he is dismissed.

[15] It follows that upon the plaintiff's conviction on the criminal charge, then Reg 33 of the 1993 Regulations comes into play whereupon the head of department shall refer the matter to the disciplinary authority with the several recommendations in paras (a) to (d), ranging from no punishment at all to dismissal.

[16] Under Reg 37(1), the disciplinary authority, after considering the report and recommendation under Reg 33, may impose any of the punishments ranging from no punishment at all to dismissal.

[17] It cannot be disputed that the letter of dismissal also makes reference to Reg 37. However, instead of dismissing the plaintiff forthwith under Reg 37, the disciplinary authority dismissed him under the general penalty of Reg 38. The question arises whether such circumstances warrant this court to hold that the plaintiff's dismissal is null and void because there has been an unfair procedure.

[18] Upon evaluating the facts herein and the circumstances it is my considered view that there has not been any gross dereliction resulting in procedural unfairness to the plaintiff. The concept of 'procedural unfairness' is an extension of the principle of 'the right to be heard' and the court will have to look into the full circumstances of the case to ascertain whether the dismissal of the plaintiff is due to the unfair procedure against him. Procedural fairness to my mind is much more than merely quoting the wrong section/provision of the law. Procedural unfairness must affect the rights of the plaintiff in that the right of the plaintiff is affected by the mistake in the legal provision. In short can it be said that the rights of the plaintiff is affected by the quoting of a wrong provision of the 1993 Regulations? The sentence of dismissal is provided in both Regs 37 and 38, and in the circumstances herein it cannot be denied that before dismissing the plaintiff, the disciplinary authority had also taken into consideration Reg 37. In the circumstances I cannot but agree with the submission of learned Federal Counsel, Pn Azizah Hj Nawawi that the doctrine of substantive fairness is applicable.

[19] The doctrine of substantive fairness was deliberated upon by the Supreme Court in *Dewan Undangan Negeri Kelantan & Anor v Nordin bin Salleh & Anor* [1992] 1 MLJ 697, where at p 725, Justice Edgar Joseph SCJ stated:

> In any event, in certain circumstances, the courts may Invoke the doctrine of substantive fairness, the effect of which is that natural justice may impinge upon the substance of a decision, as the following case will serve to illustrate.
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> In *Malloch v Aberdeen Corp* [1971] 1 WLR 1578; [1971] 2 All ER 127 at p 1582, Lord Reid said this:
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> > 'It was argued that to have afforded a hearing to the appellant before dismissing him would have been a useless formality because whatever he might have said could have made no difference. If that could be clearly demonstrated it might be a good answer.'
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> The observations of Lord Wilberforce (at pp 1594-1595) and Lord Simon (at p 1600) to the like effect are also noteworthy.
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> In *Merdeka University Bhd v Government of Malaysia* [1981] 2 MLJ 356, Abdoolcadeer J (as he then was) had the occasion to refer to the observation of Lord Reid in Malloch, quoted above, and said this: 'This seems to imply that the discretion to refuse a remedy may be exercised when the court judges that natural justice would make no difference or that there was no prejudice'.
>
> The problem of an 'inevitable result' had arisen again in the House of Lord's case of *Cheall v APEX* [1983] AC 180; [1983] 1 All ER 1130; [1983] 2 WLR 679 where the House upheld a submission that it would have been 'a cruel deception' to observe natural justice where nothing could be said that would affect the outcome.

[20] In the light of the principle so established the plaintiff herein has not suffered any injustice over the decision to dismiss him under Reg 38(g) instead of Reg 37 of the 1993 Regulations. There is nothing in the affidavit of the plaintiff to show that he has been prejudiced by the misstatement of

the regulations. Paragraph 6 of the 'afidavit jawapan' in encl 7 clearly shows that the recommendation of the head of department under Reg 33 is that the punishment of dismissal be imposed on the plaintiff because of the criminal conviction. Further, the dismissal letter also shows that the disciplinary authority has duly considered the criminal conviction and the recommendations of the head of department before dismissing the plaintiff. Thus it is patently clear that intention of the disciplinary authority as per the recommendation of the Ketua Jabatan is to dismiss the plaintiff because of the criminal conviction.

[21] Since the sentence of dismissal is provided under both provisions, that is, Regs 37 and 38(g) the end result would have been the same so that it could not be said that there was a real likelihood of him having suffered any prejudice. It follows that the dismissal for the plaintiff under Reg 38(g) instead of Reg 37 does not and cannot amount to procedural unfairness and/or procedural irregularity to the plaintiff to entitle him the relief prayed for, bearing in mind that the power of the court to grant a declaratory order is a discretionary power.

[22] On the effect of reference of a wrong section it is instructive to refer to the Federal Court case of *R Kandasamy v Kempas (Malaya) Bhd* [1981] 1 MLJ 148, where the issue before the Federal Court was whether the Industrial Court had jurisdiction to determine the dispute. The respondent contends that the court did not have such jurisdiction, since the letter by the Minister mentioned s 16A (Industrial Relations Act 1967), a provision no longer in existence. The appellant however argued that the real question is not whether or not the Minister had authority to refer the dispute under s 16A, but whether or not at the material time he had authority under the law to make the reference. At p 149, Suffian LP held:

> In our judgment, what matters is whether or not the Minister has the power to refer this dispute to the Industrial Court, not whether or not the right section has been cited in his letter of reference. If he has the power under one section but the letter mentions the wrong section under which he purports to act, that does not affect the validity of the reference.

[23] Hence in the factual matrix herein, even if the letter dated 26 August 2002, mentions the wrong section, it should not affect the validity of the decision of the disciplinary authority, because the authority does have the power to dismiss the plaintiff under Reg 37. Merely mentioning the wrong section as I have stated above does not affect the validity of the decision because the letter also shows that the authority has considered the provision of Reg 37.

[24] Again in *Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor* [1995] 3 MLJ 369, Gopal Sri Ram JCA delivering the judgment of the Federal Court stated at pp 393–394:

> In any event, assuming for a moment that the Industrial Court had given wrong reasons for holding that the appellant is a workman within the Act... its ultimate decision being correct, prerogative relief whether in the form of certiorari or prohibition ought to have been withheld from the respondent. For, it must not be

forgotten that these remedies are discretionary and are not available *ex debito justitiae* to an applicant who is able to demonstrate an error of law on the part of a public decision maker.

The true principle governing the grant of prerogative relief appears in the following passage in the judgment of Bose J in *Sangram Singh v Election Tribunal* AIR 1955 SC 425 at p 429:

> 'That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law. The High Courts do not, and should not, act as courts of appeal under art 226. Their powers are purely discretionary and though no limit can be placed upon that discretion it must be exercised along recognized lines and not arbitrarily; and *one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense … .*'

In *Kewal Krishnan v Minister of Local Bodies & Ors* AIR 1959 J & K 17, the order of the Minister was challenged on the ground, inter alia, that the reasons contained in the order made by him contained wrong reasons for his decision. Wazir CJ, in refusing relief said (at p 19):

> 'Although the reasons given in the order of the Minister may be erroneous yet if the order can be supported on other valid grounds, writ of certiorari to quash that order cannot be granted.'

Suffice to say that in the circumstances of this case, the ultimate decision being correct, no injustice of any sort, whether substantial or inconsequential, has been occasioned because of the alleged wrong reasons. (Emphasis added.)

[25] Before concluding I would like to state that in the exercise of its discretionary powers to grant declaratory reliefs there are occasions where the court must look at the justice as a whole and not simply decide that there is simply an error of law. It is undeniable that the offence committed by the plaintiff as a police officer namely falsifying document for the release of prisoners from the police lock-up, is serious in nature. The plaintiff was charged in court, convicted and fined. Based on the said conviction, his case was referred to the disciplinary authority with a recommendation that he be dismissed from the police force. After considering the conviction and the recommendations of the head of department, the plaintiff was dismissed. The only error, if any, was that the plaintiff was dismissed under Reg 38(g) of the 1993 Regulations instead of under Reg 37. But as I have stated above in so doing, there has not been any miscarriage of justice because the powers of dismissal remain with the disciplinary authority.

[26] Having considered the totality of the case, the inevitable result is that the plaintiff will be dismissed and coupled with the fact that the disciplinary authority has the power to dismiss the plaintiff under Reg 37 the mere mentioning of the wrong provision under which the dismissal was made cannot nullify the said decision.

[27] For the reasons above, the plaintiff's application herein is hereby dismissed with costs. **A**

Application dismissed with costs.

Reported by Sugandra Rao **B**

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